

# **DECISION NOTICE**

## **HORSE CREEK COMPLEX CONSERVATION EASEMENT**

### **DESCRIPTION OF PROPOSED PROJECT**

Montana Fish, Wildlife and Parks (FWP) proposes to purchase two separate and distinct overlapping perpetual conservation easements totaling approximately 15,389.25 acres in Dawson and Wibaux Counties, Montana. The reason for two separate conservation easements, rather than one single conservation easement, is to take advantage of available funding sources. The first conservation easement, the Horse Creek Complex 1 (ALE) Conservation Easement, will utilize primarily Natural Resources & Conservation Service (NRCS) Agricultural Land Easements (ALE) funding for approximately 10,550 acres. The second conservation easement, The Horse Creek Complex 2 (FWP) easement, will utilize Habitat Montana dollars to fund the remaining acres, but will encumber the entire property to ensure that the land remains in a single unit in the future. Based upon values determined by an independent appraiser the purchase of the two easements would not exceed \$6,150,000. The two Conservation Easements would function as a single, cohesive unit known as the Horse Creek Complex Conservation Easement (HCC CE). The HCC CE transitions from rolling hardwood draws and grasslands on the north, to badlands, and finally to extensive Wyoming big sagebrush grasslands on the south. The HCC CE provides excellent year-round habitat for mule deer and is within sage-grouse general range. The HCC CE also supports antelope, sharp-tailed grouse, whitetail deer, occasional elk, and a diversity of nongame and sagebrush obligate species. The HCC CE would protect healthy blocks of riparian and sagebrush habitats from conversion to other cover types, benefitting wildlife and agriculture, while also increasing public hunting and recreational opportunities.

### **MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PUBLIC PROCESS AND COMMENT**

The Montana Environmental Policy Act (MEPA) requires FWP to assess impacts to the human and natural environment.

Formal public participation in the MEPA process was initiated with a public scoping process. Public scoping was conducted July-September 2017, wherein the public was asked to identify any issues and concerns related to this Conservation Easement proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Wibaux and Dawson County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in three newspapers (the Glendive Ranger Review, the Wibaux Pioneer Gazette, and the Helena Independent Record), and on the FWP website. A total of four comments were received during the scoping process and addressed in the draft Environmental Assessment (EA).

The draft EA was released to the public December 19, 2017 with a 31-day comment period ending January 18, 2018. Legal Notice of the EA release and comment period was published two times in each of the following newspapers: the Glendive Ranger Review, the Wibaux Pioneer Gazette, and the Helena Independent Record. Public notice was placed on the FWP website. Direct mailing and/or email notification was provided to adjacent landowners, interested parties, Wibaux and Dawson County Commissioners, and DNRC and BLM staff. A public hearing was advertised and held at the Wibaux

County Courthouse on January 4, 2018; fourteen members of the public were in attendance. The Draft EA, the two easements and the management plan were available to interested parties by downloading from the FWP website. Hard copies were available at FWP Region 7 Headquarters office in Miles City, from FWP Baker Wildlife Biologist and available at the public hearing in Wibaux.

## **SUMMARY OF PUBLIC COMMENT**

A total of 42 comments were received through the public comment period representing an indeterminable number of individuals. Twenty-seven of the 42 comments expressed support for the HCC CE, all of which were received electronically and represented unique names or email addresses for those that chose to remain anonymous. One comment identified potential issues with the proposed HCC CE, and expressed neither support nor opposition to the proposal. Fourteen comments expressed opposition to the HCC CE, 12 of which the commenter chose to remain anonymous. Only five of these comments were received electronically and represented unique email addresses, the remaining nine comments were received by mail postmarked on either January 16, 2018 in Wibaux, MT (six letters) or January 17, 2018 in Billings, MT (three letters). It is impossible to determine with certainty how many unique individuals the comments received by mail represent, or if individuals submitted comments both electronically and by mail. Public comments can be viewed in their entirety in Appendix A.

Concerns were identified in the following themes:

➤ **Public Access** (Comments 16, 21, 29, 31, 36, 39, 40, and 42)

Several comments expressed that walk-in access from three parking areas along county roads does not provide adequate public access to the property, and that interior roads should be open to public vehicular travel. Comments in both 29 and 42 suggested there should be “a minimum of 12 to 15 parking spots placed evenly throughout the property”. Conversely, comments 16 and 21 specifically stated support for walk-in opportunity.

*FWP Response: The easement would grant public access to private lands. Without the easement, there would be no guarantee of public access to the Land - the public could travel county roads but could not access the property. The commenters are correct that the parking areas for this easement will be located along county roads, and that some other conservation easements do have interior designated routes on which the public is allowed to travel. The Horse Creek Complex has no such routes designated in the deeds of conservation easement because most of the ranch is not traversable by vehicles due to poor trail conditions, lack of trails developed for general vehicular access, hazardous creek crossings and clay soils that become extremely muddy with precipitation, creating difficult to impossible travel conditions and trails that are easily damaged by vehicular traffic. The property simply does not lend itself well to vehicular travel by the public. In response to this public comment, the landowner suggested adding three more parking areas, for a total of six parking areas on the property, one of which would be served by an interior access road. See Appendix B for a letter from the landowners and Appendix C for revised parking areas. The addition of these parking areas would change wording in the in the deeds of Conservation Easement as follows: “There shall be a minimum of five Parking Areas, four of which shall be located in the northern portion of the Land, and one in the southern portion of the Land. The Parking Areas shall be spaced a minimum of one mile apart, and provide adequate parking to accommodate hunters during the fall hunting season (see Paragraph II.B.5.d. above), approximately four spaces per*

*Parking Area.” The map in Appendix C would be added to the Management Plan, stating “The access road to parking area #5 may be impassable due to deep snow. Do not drive on this access road when wet and muddy.” The access road and Parking Area #5 were only added to the Management Plan (not the Deeds of Conservation Easement) because the suitability of this road for hunter access is unknown. We hope that the road will improve access for hunters, but there is potential for conflicts, stuck vehicles, damage to the road or adjacent areas, and negative experiences for the landowner and hunters. As the access road is put to use, it’s suitability as a public access road will become known. The easement would allow the landowner to require that hunters park in designated parking areas. The reason for this is to minimize danger of fires, spread of noxious weeds, to minimize the impact of vehicle traffic on rangeland and habitat values, and for safety with other motorists (including large hay and cattle trucks) traveling along county roads. While hunters must park in designated parking areas, nothing in the easement or management plan would prohibit them from packing harvested game to the nearest point along a county road and loading it into a vehicle there (as long as they could do so safely and abide by all traffic laws). Placing 12-15 parking areas throughout the ranch as the commenters suggest is not possible as discussed above, and additionally could disturb wildlife and negatively impact conservation values that the easement is designed to protect. It is well documented that game animals avoid roads and disturbance; even if it were possible to provide extensive road access to the interior of the property, the result would likely be a reduction in numbers of huntable game in the area, which would negate the benefit of easier access.*

Comment 29 stated that “Ninety-nine percent of the public does not have the ability to hike 10 miles round trip into rough terrain, hunt the property, harvest an animal, dress the animal, and then proceed to pack out the animal within the given period of time the easement allows.”

*FWP Response: The Management Plan allows hunters to be on the property two hours before first light and after dark to accommodate prime hunting hours. Most people are capable of hiking two to three miles per hour with moderate elevation gain while carrying a light pack, and hunters who like to walk will commonly cover over ten miles in the course of a day’s hunt. The property would provide valuable access to hunters who are interested in a walk-in hunting experience. Many Block Management Areas offer similar walk-in access and hunters report high satisfaction with these areas. Members of the public have the option of hiking in only as far as their interest and physical ability allow; there is no requirement for hunters to reach or harvest game in the extreme middle of the ranch. The additional parking areas shown in Appendix C would provide additional opportunity for those who are unwilling or unable to venture far from their vehicle. Neither the Easements nor the Management Plan would prevent the landowner from providing special access accommodations for elderly or disabled hunters that are unable to walk very far to hunt or pack out game. Per the Management Plan, hunters in the act of tracking or retrieving downed game are not subject to time limitations.*

*Additionally, the landowner has offered to allow public camping on the HCC EA (see Appendices B and C), which would make it easier for the public to access and hunt the interior of the ranch because they would not be required to hike in and hike out each day. Hunters could also camp at some parking areas, reducing travel time. The following was added to the Management Plan:*

- *Camping is allowed for hunters who have a multi-day reservation, subject to the following rules:*
  - *Hunters may “vehicle camp” at designated parking areas #1, 2, 4, and 6. Primitive camping only – no services offered.*

- *No camping at parking area #3 or #5 due to proximity of residences.*
- *Parking areas cannot accommodate trailers, except for parking area #2 which can accommodate one trailer that is 20' or less in length.*
- *Hunters may pack in on foot to camp in the interior of the property.*
- *To respect other parties, hunters may stay the night(s) between their hunting days only.*
- *Clean up all trash. Practice leave no trace ethics – this includes human waste.*
- *No fires, no wood stoves, no smoking*
- *The rules listed above are important to maintain safety, sanitation, habitat and range quality, aesthetics, and quality outdoor experiences for the public. Repeated violation of the above rules (i.e., more than two parties within a hunting season) warrants discontinuation of camping on the Land.*

*The updated parking areas shown in Appendix C along with the ability to camp overnight on the property would offer high-quality outdoor experiences for a wide variety of people. The north end of the HCC CE now offers four parking areas along county roads, as well as the ability to camp and even pull in a camper trailer and stay overnight. The access road and Parking area #5 offer improved access to the middle portion of the ranch, without compromising the walk-in experience for those seeking to hike in to remote portions of the ranch. The ability to pack in a camp on foot will make it easier for hunters to access and stay in this and other portions of the ranch. Parking area #6 is conveniently located in the middle of four sections of huntable land, offering abundant opportunities to hunt close to the vehicle or hike farther to access more distant portions of the HCC CE. These additions will improve the ability of the public to enjoy the HCC CE without compromising conservation values.*

Comments 29 and 36 and 42 expressed that the Management Plan does not provide adequate public access for trapping.

*FWP Response: Without the easement, the landowner could prohibit trapping on the property altogether. The landowner has the option to allow access to more than one trapper. However, while a property can accommodate many different hunters in a given year, the same is not true for trappers. Trappers commonly leave traps in place for weeks at a time. Trappers often learn their areas and the best places to make sets through years of trapping the same area. Trapper codes of ethics often include the understanding that trappers should respect other trappers' "grounds". Limiting trapping to a single member of the public is standard practice for many other lands offering public opportunity including FWP Wildlife Management Areas and DNRC state lands. Raccoons, skunks, foxes, coyotes, and other species can cause a variety of problems for private landowners. For this reason, it is important to allow the landowner flexibility to retain an individual trapper who does a good job of addressing conflicts.*

Comment 32 states "As for the hunting it appears that John Doe public will only have access depending on who they are."

*FWP Response: This comment is inaccurate. The conservation easement states that "Public access for hunting must be managed on a non-preferential and nondiscriminatory basis."*

Comment 32 states “Because of this and poorly thought out parking and road access that it will put undo and unwanted hunting pressure on neighboring landowners. For the above reasons it could also close off a lot of private property to public hunting in the two counties involved.”

*FWP Response: The easement would not grant public access for hunting or any other reason onto neighboring properties, and therefore cannot put “undo and unwanted hunting pressure on neighboring land owners” as the comment suggests. Typically, when easements are consummated, there is a net positive impact on public access. Those properties that allow public hunting or are enrolled in Block Management often continue to do so. Those properties that are closed to public hunting typically remain closed. The HCC CE would represent increased public access on private land, because the land was previously closed to public hunters (other than the single lessee), and with the consummation of the easement public access would be guaranteed on the HCC CE for perpetuity.*

Comment 42 states that the landowner and FWP need to provide guidelines and requirements to ensure that wildlife watching is encouraged and provided for throughout the year.

*FWP Response: The easement provides “The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land”. The Management Plan provides for wildlife watching at landowner discretion. The landowners need flexibility to manage wildlife watchers to minimize conflicts with livestock, and also to minimize disturbance to wildlife during critical periods. Demand for wildlife watching is currently low in Eastern Montana, and thus we anticipate it will be easy for the landowners to accommodate nearly all wildlife watchers. When and if demand for wildlife watching increases, the Management Plan may be amended to formalize guidelines for wildlife watchers to provide that form of outdoor recreation while minimizing the burden on the landowners, conflicts with livestock, and disturbance to wildlife.*

➤ **Valuation and Cost of the Easement** (Comments 1, 8, 16, 29, 30, 31, 32, 33, 39, 40, 41 and 42)

Several comments disagreed with the appraised value and total cost of the easement, whereas three comments specifically expressed support for allocating funds to the conservation easement.

*FWP Response: Easement values are determined by independent appraisal. They are not subject to negotiation as comment 29 suggests. Appraisal values as a percentage of the fee title value are not directly comparable with other conservation easements. The appraisal is unique to the property. It takes into account the specific characteristics of that property, and how easement terms will impact the value of the property.*

Three comments suggested alternate uses for the funds. Comment 30 suggested that funds available to be used for the easements should be redirected to offset current State of Montana budget shortfalls. Comment 32 states that “We believe Montana has more than enough public land and that this extreme amount of public resources could be spent on hunter education and trying to appease all private land owners instead of one at a time.” Comment 39 suggested “Habitat Montana would better spend its money helping the ranchers who were burned out, in the Lodge Pole complex fire this past summer!”

*FWP Response: Beyond the scope of the EA. More than half of the anticipated funding is federal funds that would be unavailable for the alternatives suggested by the comments. Habitat Montana dollars are derived from the sale of hunting licenses and do not include tax dollars. Habitat Montana funds are earmarked for conservation projects and therefore are also unavailable for the suggested alternate uses.*

Comment 30 expressed concern about conservation easements and IRS loopholes.

*FWP Response: It is unclear what the comment is referring to, we assume the commenter is suggesting that IRS concerns are related to tax benefits associated with conservation easements that are all or partially donated. Discussion of federal IRS loopholes is beyond the scope of this EA. FWP Legal and Lands staff keep up-to-date on all tax related and legal developments related to conservation easements and is confident that the proposed HCC EA complies with all applicable laws.*

Several comments alluded to or expressed the idea that the cost of the easement is too expensive for the public access it provides. Comment 31 compared the appraised value to the cost of private hunts and hunting leases.

*FWP Response: Access is only a portion of the appraised value of the conservation easement. The Deeds of Conservation Easement protect conservation values and limit uses of the property in the future, all of which impact the appraised value of the conservation easement. While some comments expressed that the appraised value was too high for walk-in public access from county roads, the appraisal was based on all of the terms within the draft Deeds of Conservation Easement. If it were feasible to provide public access by vehicle to the interior of the property, such vehicle access would likely increase the appraised value of the HCC CE. Comment 31 compared the appraised value to the cost of private hunts and hunting leases, stating it would take hundreds of years for the access to be “paid off”. The values quoted in comment 31 (i.e., \$500 per day or \$10,000 per year for a private hunt or hunting lease) are out of reach for most members of the hunting public. The lack of access opportunities and the cost of hunting were identified as two primary barriers to hunting in a survey conducted of Montana resident hunters in 2011 (FWP HD Unit Research Summary No. 32). Lack of access is also often cited as a primary barrier to recruiting new and young hunters. Unlike private leases and paid hunts which benefit very few individuals, this CE will benefit a large number of sportsmen and wildlife watchers for perpetuity.*

Comment 29 requests details “(i.e., roadways and parking spots) be provided by FWP to the public about the specifications of the access granted to the public by all other similar size easements that have been completed by FWP in the past” and also “information to the public concerning the percent of the total property value the public paid for previous similar size FWP easements.”

*FWP Response: FWP relies on independent appraisals to determine the value of conservation easements. Conducting a comparison of other conservation easements, which occur in different locations and were completed at different times with their own unique set of terms are not comparable. The appraisal conducted for this project involved 19 sales of land with conservation easements, each with varying terms. When establishing a valuation, a certified appraiser takes all of these variables into account along with the specific terms of the subject conservation easement and other factors. This particular appraisal has also been reviewed by a Montana licensed appraiser under contract with the NRCS and is*

*undergoing a second review by an appraiser at the national NRCS office. Such a request is also beyond the scope of this EA.*

Comment 32 states that “neighboring land owners will have to suffer with inflated land prices in their negotiations for railroad land within their ranches,” and comment 33 also states the concern that the appraisal “has a direct effect on neighboring landowners”

*FWP Response: The appraisal that was performed is specific to the land that was appraised. It is not appropriate to use an appraisal on one unit to somehow value another that might have very different characteristics, even in the same area. Individuals interested in purchasing neighboring or nearby lands should consider contracting for appraisals on those parcels to assist in negotiations. There are too many variables between different properties to make sweeping value judgements based on an appraisal whose specific and named use was for a conservation easement purchase on the HCC CE.*

Comment 33 states “At the public meeting in the Wibaux County Courthouse, I asked the question who performed the appraisal on the Springhill ranch. The response was Darlene Edge performed the appraisal”

*FWP Response: The comment is incorrect. Darlene Edge is a land agent in Helena who provided information on the appraisal at the public meeting. Kim Colvin is the independent appraiser who conducted the appraisal.*

Comment 33 suggests that “a minimum two appraisals should be completed and the standard is three appraisals should be completed for comparison and determination of accuracy...If there are only two appraisers in the state of Montana that are qualified to do the devaluation assessment from a conservation easement, other reputable land appraisers in neighboring states should be sought.”

*FWP Response: One appraisal is typically adequate to establish value for a property. Doing more than one appraisal is not the appropriate way to value real estate. The appraisal of the property must comply with the Uniform Standards of Appraisal Practice, be completed by a licensed appraiser, and is subject to two appraisal reviews by licensed appraisers. One of the reviews has been completed, and the appraisal approved. For projects with a valuation of more than \$1,000,000, the appraisal must be reviewed by a NRCS appraiser in Washington D.C. The NRCS review of the appraisal has not been completed.*

➤ **Mineral Rights & Oil and Gas Development** (Comments 30, 34, 37, and 39)

These comments expressed concerns that FWP should not pursue the purchase of the HCC CE due to the possibility of oil and gas development, or that stipulations in the easement would hinder oil and gas development on the Horse Creek Complex and surrounding lands. Comment 34 was submitted by individuals that hold mineral rights on the property, asking “Who is going to compensate us for the loss that we will assume if this easement is placed into effect?”

*FWP Response: In proposed conservation easements where the surface landowner does not own the mineral rights, or only owns a portion of the mineral rights, each proposed conservation easement has a Minerals Remoteness evaluation completed to determine the likelihood of economically feasible mineral development. If the property has any more than a low potential for surface mineral development, the conservation easement is not acquired. Both the NRCS and FWP minerals remoteness evaluations showed low potential for surface mineral development, so FWP is considering acquisition of the conservation easement.*

*Because FWP does not consider acquiring conservation easements on, or fee acquisitions of properties with more than low potential for surface mineral development, all properties are similarly appraised. We have no appraisals that reflect mineral valuation. There is minimal if any market data that reflects or considers mineral value in appraisals. There is no additional value added to an appraisal for mineral ownership.*

*Each Conservation Easement acknowledges there may be third party mineral rights, stating “If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party’s exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.” Aside from trying to “influence the third party to adopt recommended mitigation measures,” neither the landowner nor FWP have any control over mineral development on the property, nor does the Conservation Easement impact those rights. Further, as part of FWP’s due diligence it has reviewed the mineral potential of the subsurface estate. Based on this review, the Department is confident that the likelihood of large-scale impacts to the property’s Conservation Values from any such development is unlikely.*

Comment 39 suggested that FWP conducted the minerals remoteness assessment.

*FWP Response: The minerals remoteness assessment was conducted by the NRCS, and review of the NRCS minerals remoteness evaluation was conducted by a qualified geologist hired by FWP.*

Comment 37 states “There are currently energy corridors running north and south that are in the proximity of the proposed conservation easement...As a neighboring land owner, this conservation easement will have a direct negative impact on my ability to acquire any type of energy easement to support our state and national infrastructure. Neither me nor other neighbors will receive any compensation for the inherent devaluation of our property.”

*FWP Response: The conservation easement would have no impact on energy corridors in proximity to the conservation easement on neighboring lands. Further, the easement does not prohibit construction of new utilities serving adjacent lands, stating: “Subject to **Prior Approval**, the Landowner retains the*



*right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan..."*

➤ **Fire breaks:** Comment 28

Comment #28 expressed the concern that the HCC CE would inhibit the installation of fire breaks/fire lines on the easement, which could result in large fire that would impact neighboring properties.

*FWP Response: The Conservation Easement provides for fire breaks/fire lines to be installed, stating "The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable."*

➤ **Prairie Dogs:** Comment 28

Comment #28 expressed the concern that the HCC CE would prohibit prairie dog control, which would lead to prairie dog establishment and issues on neighboring properties.

*FWP Response: The Deeds of Conservation Easement were amended to read "Prairie dogs are not currently present on or adjacent to the easement property. Should prairie dog control be deemed necessary, **Prior Notice** is required for pesticide use to control prairie dogs."*

➤ **Taxes:** Comment 32

Comment 32 states "It will also affect future taxes on the property because of the value being removed that will be nontaxable after the next sale of this property."

*FWP Response: Beyond the scope of this EA. See MCA 76-6-208, in particular the highlighted section below:*

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

➤ **EA Process:**

Comments 30 and 32 state that the public comment period should be extended.

*FWP Response: Public process associated with this EA has followed MEPA guidelines. The 30-day public comment period for EAs is standard for projects of this nature.*

Comment 35 states opposition to the EA because it was prepared by Montana Fish Wildlife and Parks personnel, and suggests that the EA is “totally skewed toward the purchase of the conservation easement,” and that “in the corporate world any company that is required to do an EA for a proposed project is required to have an unbiased third party perform the assessment”

*The Montana Environmental Policy Act (MEPA) does not require that EAs be performed by third parties. It is standard practice for agency personnel to prepare EAs. The EA considers both the proposed and no action alternatives throughout the document. The commenter provides no specific examples to support their assertion that the EA analysis is biased.*

➤ **Threats/Appropriateness of Conservation Easement:** (Comments 31 and 38)

Comment 31 talks about stewardship by private landowners, suggesting that conservation easements are unnecessary. Comment 38 disagrees with threats identified in the EA, specifically tillage and subdivision, and would prefer to see conservation easements pursued next to larger cities such as Billings, Bozeman, or Missoula.

*FWP Response: Beyond the scope of this EA. Comment 31 is absolutely correct that private landowners can be excellent stewards of wildlife and habitat. However, threats identified in the EA such as conversion of native range, development (e.g., for housing or industry), subdivision, and improper grazing can negatively impact wildlife and habitat on private lands. The HCC CE would ensure that habitat values on the property are protected by private landowners in perpetuity. When proposed, the HCC CE land project proposal was subjected to a rigorous internal ranking process against other conservation easement proposals from across the state, before being submitted to the Fish and Wildlife Commission for an endorsement to proceed with this project. The proposal ranked as a high-priority because of potential benefits to wildlife, habitat, and sportsmen. The purchase of the HCC CE would not preclude future conservation easement projects closer to large cities, if projects with willing landowners and high-priority habitat are submitted for consideration in those areas.*

**DECISION NOTICE**

Utilizing the EA and public comment, a decision must be rendered by FWP which addresses the concerns and issues identified for this proposed action.

FWP’s analysis supports purchasing the two separate and distinct overlapping perpetual conservation easements encompassing approximately 15,389.25 acres in Dawson and Wibaux Counties, Montana that comprise the HCC CE.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment (EA) is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

**After review of this proposal, it is my decision to accept the draft EA as supplemented by this Decision Notice and changes herein as final, and to recommend proceeding with the proposed Horse Creek Complex Conservation Easement, contingent on approvals by the Fish & Wildlife Commission and the Montana Board of Land Commissioners**

The Final EA may be viewed on FWP's Internet website: <http://www.fwp.mt.gov> or be obtained upon request from Montana Fish, Wildlife & Parks, Region 7 Headquarters, P.O. Box 1630, Miles City, MT 59301, (406) 234-0900.



Brad Schmitz

FWP Region 7 Regional Supervisor

January 25, 2018

Date:

## Appendix A

### Public Comments

Comments in Support of the Proposed Action:	
1	<p>Name: Bert Otis City: Emigrant</p> <p>Dear Fish Wildlife &amp; Parks Commission, I support Alternate A the purchase of the Horse Creek Complex Conservation Easement. As I said during the scoping process, the purchase of a CE sometimes is better then purchasing the land. This easement seems like a lot of money, but it gives the public access and keeps the ranch as a ranch!!!! The grazing plan looks great, and it will keep the habitat as close to natural as possible, and still provide grazing for livestock. Please support this CE purchase. Thank you</p>
2	<p>Name: Doug Doty City: Missoula (formerly of Glendive)</p> <p>I am writing in support of this conservation easement. The protection of habitat in eastern Montana is highly important.</p>
3	<p>Name: Paul Seeberger City:</p> <p>I grew up in Dawson county. I have hunted and recreated in this area. I strongly support this conservation easement.</p>
4	<p>Name: Ashlee Coon City: Glendive</p> <p>I support the purchase of the Horse Creek conservation easement.</p>
5	<p>Name: BJ Coon City: Glendive</p> <p>I support the purchase of the Horse Creek Conservation Easement.</p>
6	<p>Name: Brian Schaaf City: Glendive</p> <p>To whom it may concern, I am writing to tell you how happy I am about this conservation easement, I am a life long resident of eastern Montana. I was born in Glendive, and raised in Wibaux. My parents still live in Wibaux</p>

	<p>and are also excited about this easement. I currently live in Glendive so this is basically in my back yard. I can't wait to spend some time out there with my two sons.</p> <p>Thank You</p>
7	<p>Name: Jesse Schaaf City: Glendive</p> <p>As a resident of Dawson County, I strongly support the purchase of the Horse Creek Complex Conservation Easement in Dawson and Wibaux Counties. It would provide much-needed public access for outdoor recreational activities as well as habitat protection for a multitude of wildlife species in the area.</p>
8	<p>Name: Clark Dodd City: Emigrant</p> <p>I would like to express my support for the Horse Creek Complex Conservation Easement. When an opportunity to protect quality habitat, while simultaneously improving access, presents itself, that opportunity should be seized. The purchase of this easement would contribute to long-term stability, locally, statewide, and regionally, for wildlife and humans. Therefore, I believe that it would be a wise use of FWP funds. Additionally, I would like to thank everyone that invested their time and effort in this project. Keep up the good work, we appreciate it.</p>
9	<p>Name: Troy Paulson City: Bozeman</p> <p>I am in favor of this easement. This is a win for sportsmen and more importantly a win for the wildlife.</p> <p>Thank you for your consideration.</p>
10	<p>Name: Robbie Fix City: Ekalaka, mt</p> <p>I support the purchase of this conservation easement. What a great way to conserve habitat, hunting access, and our montana ranching heritage.</p>
11	<p>Name: Nick City: Missoula</p> <p>After reading through the Easement Draft, I think this would be amazing for the opportunities it would provide for public access. I have some friends that head over to the area each year and have access to private land in the same area and the hunting they do there every year is incredible. Allowing this access to the public would provide great opportunities for others as well as the continued management of wildlife in the area.</p>

12	<p>Name: Kevin Pena City: Glendive</p> <p>I fully support the purchase of this easement. Access is critical to maintaining the rich history and culture of outdoor sports, and increasing that access is an investment for all Montanans. Kudos to FWP for taking this proactive approach to help guarantee the future of hunting, fishing, and wildlife in Eastern Montana!</p>
13	<p>Name: Gerry Shaw City: Rapid City</p> <p>I support the efforts of Montana FWP to protect habitat that is crucial for mule deer, sage grouse, and a wide variety of other species. With the ever encroaching human presence, these easements are vital to the survival of a plethora of wildlife.</p>
14	<p>Name: John Miller City: Billings</p> <p>I am in full support of FWP purchasing the Horse Creek Complex Conservation Easement. Any time valuable habitat becomes available that increases the public's opportunity for outdoor recreation as well as preserving key habitat for wildlife and fish, it is of utmost importance that we act on securing such lands.</p> <p>Thank you.</p>
15	<p>Name: Ty Stubblefield City: Florence, Montana</p> <p>I support the purchase of the Horse Creek Complex Conservation Easment. Please follow through with this important conservation effort.</p>
16	<p>Name: Justin Schaaf City: Fort Peck</p> <p>I strongly support the Horse Creek Complex Conservation Easement. As a lifelong resident of Eastern Montana and someone that was born and raised in Glendive this particular easement would provide quality walk-in hunting and wildlife watching opportunities for citizens in the local communities. I have spent many days in the area growing up and still hunt this general area and am thrilled to see FWP pursue this easement by using the appropriated funds. Thank you for your time.</p>
17	<p>Name: Tom Healy City: Whitefish</p> <p>Certainly support this project. Thanks for your continued hard work.</p>

18	<p>Name: Glenn Ferren City: St Regis MT</p> <p>I support the proposed purchase of a Conservation Easement (Horse Creek Complex).</p>
19	<p>Name: Anonymous City:</p> <p>I fully support this. It is a great opportunity for better access for all, really appreciate it and look forward to hunting it someday.</p>
20	<p>Name: Hayden Clark City: Glasgow</p> <p>I'm a resident of Eastern Montana and I spend many days in the field throughout the year in both Region 6 and 7 hunting and hiking. I support FWP's efforts to provide more public access, not only for the present but for many generations. I also support their efforts to protect habitat for the many species that call Eastern Montana home. I support the proposed Horse Creek Complex Conservation Easement.</p>
21	<p>Name: Ryan nottestad City: Glendive</p> <p>I am very excited about this proposal, it is a great thing for the public and wildlife in Dawson and Wibaux counties. This exact area is one I have dreamed of accessing and to have it protected in perpetuity would be outstanding. I highly recommend proceeding with the purchase of these 2 easements. Hopefully when these easements are purchased there will be procedures in place to limit driving on the property by the public such as walk in access from county roads.</p>
22	<p>Name: Anonymous City:</p> <p>I think that this easement would be a great thing for the people of Montana. Thank you for recognizing the importance of maintaining and enhancing access to our public lands across the state!</p>
23	<p>Name: Felicia Luebeck City: Butte</p> <p>Do the easement! Open it up to public access!</p>
24	<p>Name: Anonymous City:</p> <p>I am in favor of opening more access to the public. I hope this easement goes through.</p>

25	<p>Name: Aaron City: Whitefish</p> <p>I support the purchase of the proposed horse creek complex conservation easement. As stated in the draft, access is one of the primary factors negatively affecting new hunter recruitment, and hunting plays a pivotal role in the North American model of wildlife conservation.</p>
26	<p>Name: Grant Petersen City: Dillon</p> <p>I fully support the acquisition of this easement. Theses easements will prevent development as well as increase access to hunting. The easement will secure important mule deer habitat.</p>
27	<p>Name: Jim and Katrina Johnson and kids Kirsten and Garrett City: Wibaux, MT</p> <p>I would like to mention how nice the Horse Creek project will be to outdoorsman and women in Eastern MT. Our family is an avid hunting family. We hunt large and small game as well as upland birds. We hunt with rifle and bow.</p> <p>We enjoy the outdoors and have a great love for our natural resources.</p> <p>We appreciate also the opportunity to photograph this beautiful creation.</p> <p>We are grateful for this future opportunities that await us.</p>

<b>Comments Expressing Neither Support Nor Opposition for the Proposed Action:</b>	
28	<p>Name: Don Anderson City: Wibaux, MT</p> <p>How does the easement or management plan address the emergency need to develop fire breaks/fire lines should that become necessary?</p> <p>Prairie dogs should NOT be allowed to establish on the easement property to prevent neighboring landowners from having to deal with potential encroachment issues on their own land should prairie dogs become established. Easement landowners should be allowed to use whatever means available to control prairie dogs.</p>



**Comments Opposed to the Proposed Action:**

29	<p>Name: Anonymous City: Glendive</p> <p>From a public access viewpoint, I believe this easement makes no practical sense. The second stated purpose of this easement is as follows: "Second, to provide managed public access to the land for hunting, trapping and wildlife viewing." There are only three parking spots (see map in chapter 1.0 page 2 of the Draft Environmental Assessment), all of which are located on the exterior edges of the property on ALREADY PUBLIC roads. Even if the three parking spots were strategically located, this would not be nearly adequate to provide public access to the 20,379 acres covered by the proposed easement. It is clear that neither the land owner nor FWP has any desire to provide public access through this easement. Ninety-nine percent of the public does not have the ability to hike 10 miles round trip into rough terrain, hunt the property, harvest an animal, dress the animal, and then proceed to pack out the animal within the given period of time the easement allows (Deed of Conservation Easement II.B.5.j."This easement does not grant any public right of overnight camping"). This is not public access. There needs to be an amendment made to the proposed easement with roadways going through the main portion of the ranch with a minimum of 12 to 15 parking spots placed evenly throughout the property. I know for a fact that the Brewer Ranch easement with FWP has miles of private roads going through the heart of the ranch that give access to the property for the public in the easement.</p> <p>The second stated purpose also includes public access to trapping. However, the proposed easement states in the Draft Management Plan, table of contents number nine page 38, "The Landowner must allow a minimum of one member of the public to trap on the Land during established trapping seasons. They may select the individual that is allowed to trap on the Land and may retain that individual for as long as they wish." This is not adequate public access to trapping. The general public does not have access when the landowner gets his/her choice of only one person and that can remain their choice indefinitely.</p> <p>In response to my comment, I request details (i.e. roadways and parking spots) be provided by FWP to the public about the specifications of the access granted to the public by all other similar size easements that have been completed by FWP in the past.</p> <p>In its current form, the easement appraised value was just over 60 percent of the total fee appraisal, or 6,150,000 dollar easement on the roughly 10,150,000 dollar total property value. Even with the non adequate public access that this easement has, it was still valued at 60 percent. Based on my research, similar size FWP easements are typically negotiated at a value of 25 to 30 percent of the total property appraisal (and also include much more public access). In addition to my previous request, I request FWP provide information to the public concerning the percent of the total property value the public paid for previous similar size FWP easements.</p>
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30	<p>Name: Anonymous City: Protest against the Horse Creek Complex Conservation Easement:</p> <p>1) It is my understanding that the Montana Legislature was called into special session because of the need for budget cuts which hurt many Montana citizens. Any division of the State of Montana that has \$6,150,00.00 to consider a purchase of an easement and only an easement, not the land itself, should consider contributing to the States Budget shortfall until the shortfall can be resolved, then spend six million on an easement.</p> <p>2) The Assessor's office in Wibaux County, Montana is one being considered for closure while the State has six million to spend on an easement?</p> <p>3) The Proposal indicates the money is coming from the Habitat Montana Funding and NRCS ALE money and that no tax dollars are being used. Yet, the IRS has written of many complaints of the loopholes the conservation easements are providing. The loopholes should be examined before any documents are signed.</p> <p>4) There has always been an interest in oil and gas in Dawson and Wibaux Counties. The last leases were dated in 2012. The lack of any current leases reflects the price of oil and not the lack of interest. Friends have received a \$25.00 per net acre offer in Dawson County, MT within the last two weeks. The Easement will hinder any oil and gas development with stipulations and rules that are unnecessary. Oil and Gas Development will benefit Schools, infrastructure and the budget shortfall within the state.</p> <p>The comment period should be extended</p>
31	<p>Name: Anonymous City:</p> <p>I would like to make three points regarding the Horse Creek Conservation Easements.</p> <p>(1) The Easements have been sold to the public as “public access”. However with 31 sections of property within the easements and only three parking places (all of which are located on county roads) for the public, I find it hard to call it “public access”. The public will not even be allowed to drive through 75% of the property, so to call it public access is just not accurate.</p> <p>(2) The amount of money the land within the easement has been valued at by appraisers is absurd. The land has been valued at \$660 per acre. The process for coming to the number of dollars involved in the easements was an average of local farms and ranches sold since 2012. One cannot take a 500 acre piece of farm ground and a 20,000 acre ranch made up of gumbo buttes and native grass and take an average to find the value of a ranch that is primarily made up of gumbo buttes and native grass. One should ask the question “why did they choose 2012 and not go back to 2011 when this very ranch was purchased?” The</p>

	<p>answer is simple--the ranch was purchased for \$335 dollars per acre. The amount of money that is being used is simply irresponsible, especially when 50-55% is tax payer funded and 45-50% taken from local hunters through hunting tags and licenses.</p> <p>(3) The landowner is required to allow 600 hunter days per year if demand requires. So if you were to take 600 days and multiply it by 20 years, it comes out to 12,000 hunter days. Then if you take \$6,150,000 (the amount of dollars spent for the easements) and divided that by the 12,000 hunter days it comes out to \$512.50 per day of hunting. A rate of \$500 per day would buy a lot of different private hunts in Montana. With that private hunt, you would have access to drive every road and park anywhere you wished, within the boundaries of the ranch. Also you would be given a place to stay and in some cases your food would be provided. On top of all of that, those private hunts guarantee the chance at whatever animal you are hunting. All of which are not provided with these easements. If you were to take the high-end rate for an annual hunting lease on a ranch this size (\$10,000) it will take 615 years for this easement to be "paid off". I believe the dollar amount used to purchase the easements is totally irresponsible.</p> <p>Several places in the Draft Management Plan for the Horse Creek Complex Conservation Easements the assumption is made that we need to have this plan to guard the land and the wildlife from people who are making a living on the land. I believe this assertion is false. In visiting with members of the older generation they tell the same story. After WWII there was no wildlife roaming the hills and plains in Eastern Montana. Over the years the farmers and ranchers have worked to develop their land. This has resulted in not only their crops and livestock flourishing but the wildlife and grasses to flourish as well.</p> <p>When we go hunting we look for game on land that has been developed, whether it is hay ground, crop land or tame grass meadows. A great number of wildlife are supplemented by haystack and feed grounds in Eastern Montana. Developed water supplies are a great asset to wildlife--such as pipelines, wells and reservoirs. The drought of 2017 would have been devastating to wildlife without these water developments created by the local landowner.</p> <p>Regarding the land being preserved, there is very little difference now than 200 years ago. In fact, some of the differences are better thanks to the landowners. Controlled grazing is a concept found in the Draft Management Plan and is something that landowners have been doing for generations to improve and preserve the land.</p> <p>This was all accomplished without a \$6,150,000 easement.</p>
32	<p>Name: Anonymous City:</p> <p>Comments RE: Horse Creek Complex Conservation Easement We believe this plan puts a false value on the railroad land involved in this transaction. Now the neighboring land owners will have to suffer with inflated land prices in their negotiations for railroad land within their ranches. It will also affect future taxes on the property because of the value being removed that will be nontaxable after the next sale of this property. As for the hunting it appears that John Doe public will only have access depending on who they are. Because of this and poorly thought out parking and road access that it will put undo and unwanted hunting pressure on neighboring land owners. For the above reasons it could also close off a lot of private property to public hunting in the two counties involved. We believe Montana has more than</p>

	<p>enough public land and that this extreme amount of public resources could be spent on hunter education and trying to appease all private land owners instead of one at a time. We could go on and on with the faults of this contract but at this time we believe that an extension of the comment period should be made to allow both sides of the public to be made aware of the complexity of this document. We wish to remain anonymous at this time so we can remain friends and neighbors in the community.</p>
33	<p>Name: Charles Kahl City: Wibaux, MT</p> <p>Date: January 17, 2018</p> <p>At the public meeting in the Wibaux County Courthouse, I asked the question who performed the appraisal on the Springhill ranch. The response was Darlene Edge performed the appraisal and she was one of only 2 appraisers that MT FWP allowed to complete their appraisals. With the scope of the entire ranch appraisal in the \$10 million dollar range and the proposed purchase price of the conservation easement (also known as the value that the ranch would be devalued as a result of the conservation easement as I understand it) being over \$6 million dollars, it seems to me at a minimum two appraisals should be completed and the standard is three appraisals should be completed for comparison and determination of accuracy. There are numerous land appraisal companies in the state that would appraise the entire ranch value. If there are only two appraisers in the state of Montana that are qualified to do the devaluation assessment from a conservation easement, other reputable land appraisers in neighboring states should be sought. I do not feel the valuation is accurate and the fact that only one appraisal was completed does not ease my concern. This has a direct effect on neighboring landowners, which I am one, and I think we deserve to see more than one appraisal completed by an appraiser other than one that was hand picked by the MT FWP. At this point in time where only one appraisal was completed, I am against the proposed Horse Creek Complex conservation easement.</p>

Comment 34 – postmarked January 17, 2018 from Billings, MT

Comments on the proposed Horse Creek Complex conservation easement

Name: Carla and Robin Delp

City: Vida, MT

Date: January 16, 2018

We are the former owners of the Springhill Ranch located in Wibaux and Dawson counties and we are the current owners of the mineral rights on the majority of this ranch. As I'm sure you are aware, the mineral rights supersede any surface rights so they would still be able to be produced on this ranch. Even though the mineral rights remain intact, the additional requirements that this conservation easement would place and restrict on the surface for production facilities would financially burden most production companies to a point where leasing and producing these minerals would not be economically viable. This has a direct effect of lowering the lease value or direct sale of the mineral right asset. Who is going to compensate us for the loss that we will assume if this easement is placed into effect? An appraisal has been performed on the devaluation of the land as a result of the conservation easement, has an appraisal been performed on the devaluation of the mineral right asset? The geology report prepared by Kari Scannella, State Geologist on the Springhill Ranch specifically states that oil and gas production is prevalent near the proposed easement, and there is a potential for production to expand throughout both Wibaux and Dawson counties in the future. The geology report lists 11 counties, of which both Dawson and Wibaux counties are listed, that the Bakken, Three Forks, and Sanish Formation shales are found. Furthermore, the report states that there is a high possibility Montana will see oil exploration in all 11 counties (Dawson and Wibaux counties included) in the future. One other point that I would like to make is there were several oil wells drilled on this property in the mid 90's. This signifies a formation that oil production companies are aware of beneath the property that contains oil. These wells produced oil but not at a rate that was economically sustainable with production technology at that time. With the advancements in production and drilling technologies, it will be a matter of time before production companies will find a way to do this in an economical way. Why would the MT FWP want to purchase a conservation easement in an area that they would not have the rights to stop oil and gas development in the future if the development has a "high possibility" as described in the geology report? In addition, if oil production were to commence in this area it would financially burden the MT FWP with the additional staff it would require to adequately facilitate this conservation easement. We are adamantly against the proposed Horse Creek Complex conservation easement and we will be seeking legal counsel to protect our mineral right asset.

Carla Delp  
Robin Delp



Comment 35 – postmarked January 16, 2018 from Wibaux, MT

January 9, 2018

Horse Creek Complex Conservation Easement EA  
Montana Fish, Wildlife & Parks  
c/o Melissa Foster, Wildlife Biologist  
Baker, MT 59313

To whom it may concern:

In reading the environmental assessment (EA) for the proposed Horse Creek Complex conservation easement, the tone of the entire EA seemed totally skewed towards the purchase of the conservation easement. When I researched this further, I found that the EA was performed by the Montana Fish Wildlife & Parks themselves. An EA by nature should address all positive and negative aspects of a proposed project both if the project is completed and also if the project is not completed. This completely seems like dirty pool to me that the agency that is proposing this conservation easement is also the agency that is completing the EA. In the private and corporate world any company that is required to do an EA for a proposed project is required to have an unbiased third party perform the assessment. Only then will all issues and concerns be addressed. In any project where federal tax dollars and money paid to Habitat Montana through hunting license sales are spent, I think the public deserves to have an unbiased report completed. Only then can the public comment responsibly on proposed "action" or "no action" plans. I am against the proposed conservation easement until an unbiased environmental assessment can be performed that the public can make informed, educated comments.

Respectfully submitted,

Concerned Montana Resident

Comment 36 - postmarked January 16, 2018 from Wibaux, MT

Name: Montana Hunter

City: Glendive, MT

Comments regarding Horse Creek Complex conservation easement:

The proposed parking locations within the Horse Creek Complex do not provide sufficient access for the majority of hunters or outdoor enthusiasts to enjoy this easement. MT FWP desires to get all ages and all walks of people involved in the outdoors whether it be watching birds or hunting. The current three parking areas do not provide sufficient access for young, elderly, or disabled hunters or outdoorsmen that MT FWP strives to get exposure to the outdoors. Google maps shows several two track roads that I assume the ranch uses for typical day to day operation that connects the North parking spots to the South parking spots. If these two track roads already exist, there would be very little environmental impact to allow the allotted hunters to also use these existing roads and provide for a parking spot more centrally located that can be accessed from the North or South. This would provide access for all the public and not just a limited amount of people that have the ability and physical requirements that it would take for a 10-15 mile round trip hunt or hike from the proposed access points. I understand that the land owner would have rights to individually grant vehicle access if requested, but there is no requirement to do so; therefore the landowners I have experience with do not have to and will not allow even young, elderly, or disabled individuals seeking to enjoy these easements. In addition, the proposal only requires access for one trapper. Is the MT FWP suggesting that trapping is a less desirable activity than bird watching, hunting, or other outdoor activities? This is completely unacceptable to only require the landowner grant access to one trapper. Trappers also contribute to the Habitat Montana money and federal tax dollars involved in this proposed purchase. If public access is limited to this extent of the proposed three parking spots, I am strongly against the Horse Creek Complex conservation easement. All of the Habitat Montana money derived from purchasing licenses and federal tax dollars from the NRCS ALE should be used to purchase a conservation easement where there is true public access and not the extreme limited access that this easement is proposing.



## Comment 37 – postmarked January 16, 2018 from Wibaux, MT

### Horse Creek Complex Conservation Easement comments

There are currently energy corridors running north and south that are in the proximity of the proposed conservation easement. These corridors contain overhead power transmission lines, natural gas transmission pipelines, LNG pipelines, and crude oil pipelines. As a neighboring land owner, this conservation easement will have a direct negative impact on my ability to acquire any type of energy easement to support our state and national infrastructure. Neither me nor other neighbors will receive any compensation for the inherent devaluation of our property that directly border this property so I am 100% against this conservation easement.

Neighboring land owner  
Wibaux, MT



## Comment 38 – postmarked January 16, 2018 in Wibaux, MT

### HORSE CREEK COMPLEX CONSERVATION EASEMENT IN DAWSON AND WIBAUX COUNTIES

The intent of a conservation easement is to stop potential development or subdivision of private property that has a high potential for being developed, subdivided, or changing the natural habitat in a way that would inhibit wildlife. The Environmental Assessment directly states in described "Alternative B: No Action. The Department would not purchase the Horse Creek Complex Conservation Easement" that if this option is chosen that the land would still be used as a working ranch but could be at risk for conversion of land to tillage acreage or subdivision. This property is a ranch and not a farm. If it had the potential for tillable acreage, it would've already been converted and successfully farmed. The potential in rural areas like this for subdivision are very small and typically consist of small parcels being sold with maintained status of ranch property which have little to no effect on the ability to provide habitat for wildlife. I am against this conservation easement and feel the money would be better spent buying a conservation easement next to larger cities in the state that are expanding at alarming rates such as Billings, Bozeman, Missoula, etc. The described expansion has a far greater potential and likelihood of permanently destroying wildlife habitat that should be saved.

Montana resident  
Eastern Montana

WIBAUX MONTANA  
WIBAUX MONTANA

between the property and the proposed development is small

and the proposed development is not a high priority for the state of Montana. The proposed development is not a high priority for the state of Montana.

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## Comment 39 – Postmarked January 16, 2018 in Wibaux, MT

### Draft Environmental Assessment Horse Creek Complex Conservation Easement Comment Sheet

A Draft Environmental Assessment (EA) is available for review and public comment. The EA can be viewed here or is available upon request from the FWP Region 7 office, (406) 234-0900. Public comment is welcome and will be accepted until 5:00 p.m., Thursday, January 18, 2018. Written comments can be submitted online: [http://fwp.mt.gov/news/publicNotices/conservationEasements/pn\\_0033.html](http://fwp.mt.gov/news/publicNotices/conservationEasements/pn_0033.html), mailed or emailed: Horse Creek Complex Conservation Easement EA Montana Fish, Wildlife & Parks c/o Melissa Foster, Wildlife Biologist PO Box 1287, Baker, MT 59313 [mfoster@mt.gov](mailto:mfoster@mt.gov)

Name: Wibaux County Resident

City: Wibaux, MT

Email :

Comments: attached

It is my understanding a minerals remoteness evaluation was completed by FWP and NRCS pertaining to the Horse Creek complex CE, and this evaluation stated: there is a high possibility Wibaux and Dawson counties will see oil exploration. Due to the fact Springhill ranch owns NO minerals, have the mineral owner/owners been notified of the devaluation of their mineral assets, once the CE is in place?. Devaluation occurs due to the fact, oil companies don't want to jump thru all the hoops that will be put in place by the FWP to manage the wildlife. Instead of dealing with the FWP restrictions, the oil companies will seek land/leases in other areas, where they don't have to deal with the restrictions. I feel any future oil/gas activity(seismograph, building of oil well locations, drilling, completing wells, producing wells, pipelines, etc.) on the proposed Horse Creek Complex CE, would be greatly diminished if this CE is approved, thus devaluing the minerals. Where this property has a moderate to high possibility of future oil and gas exploration, the acquisition of this property should not be considered as a CE. Is it a standard practice for the FWP to conduct their own geology, mineral and environmental assessments? If so how accurate do you feel these assessments are? If any other entity was allowed to do their "own" assessments, where \$6,150,000.00 dollars is being spent, it would be considered a gross conflict of interest, and in many cases this would be against the law!! This CE looks like a FWP land grab, with no regard for the mineral owners, neighbors, or hunters. On the topic of hunters, the FWP has not provided adequate access to this ranch!!! The placement of your 3 parking areas drastically limits access to the majority of this ranch, and lets not forget FWP is proposing to pay MILLIONS of dollars for public access!! Shame on you!!! I am adamantly against the proposed CE, and maybe Habitat Montana would better spend its money helping the ranchers who were burned out, in the Lodge Pole complex fire this past summer!



## Comment 40 – Postmarked January 16, 2018 in Wibaux, MT

### Draft Environmental Assessment Horse Creek Complex Conservation Easement Comment Sheet

A Draft Environmental Assessment (EA) is available for review and public comment. The EA can be viewed here or is available upon request from the FWP Region 7 office, (406) 234-0900. Public comment is welcome and will be accepted until 5:00 p.m., Thursday, January 18, 2018. Written comments can be submitted online: [http://fwp.mt.gov/news/publicNotices/conservationEasements/pn\\_0033.html](http://fwp.mt.gov/news/publicNotices/conservationEasements/pn_0033.html), mailed or emailed: Horse Creek Complex Conservation Easement EA Montana Fish, Wildlife & Parks c/o Melissa Foster, Wildlife Biologist PO Box 1287, Baker, MT 59313 [mfoster@mt.gov](mailto:mfoster@mt.gov)

Name: Concerned Hunter

City: Wibaux, MT

Email :

Comments: see attached sheet

Montana Fish, Wildlife & Parks Conservation Easement Objective:  
"Provide managed public access to hunters"

I feel due to your parking area locations you have failed miserably at providing public access!! From your designated parking areas, in order to access some areas on this ranch, it is a 4 to 5 mile walk as the crow flies. That far of a walk is unrealistic due to rough country and the lay of the land. Realistically it would be more like a 5 to 7 mile walk.

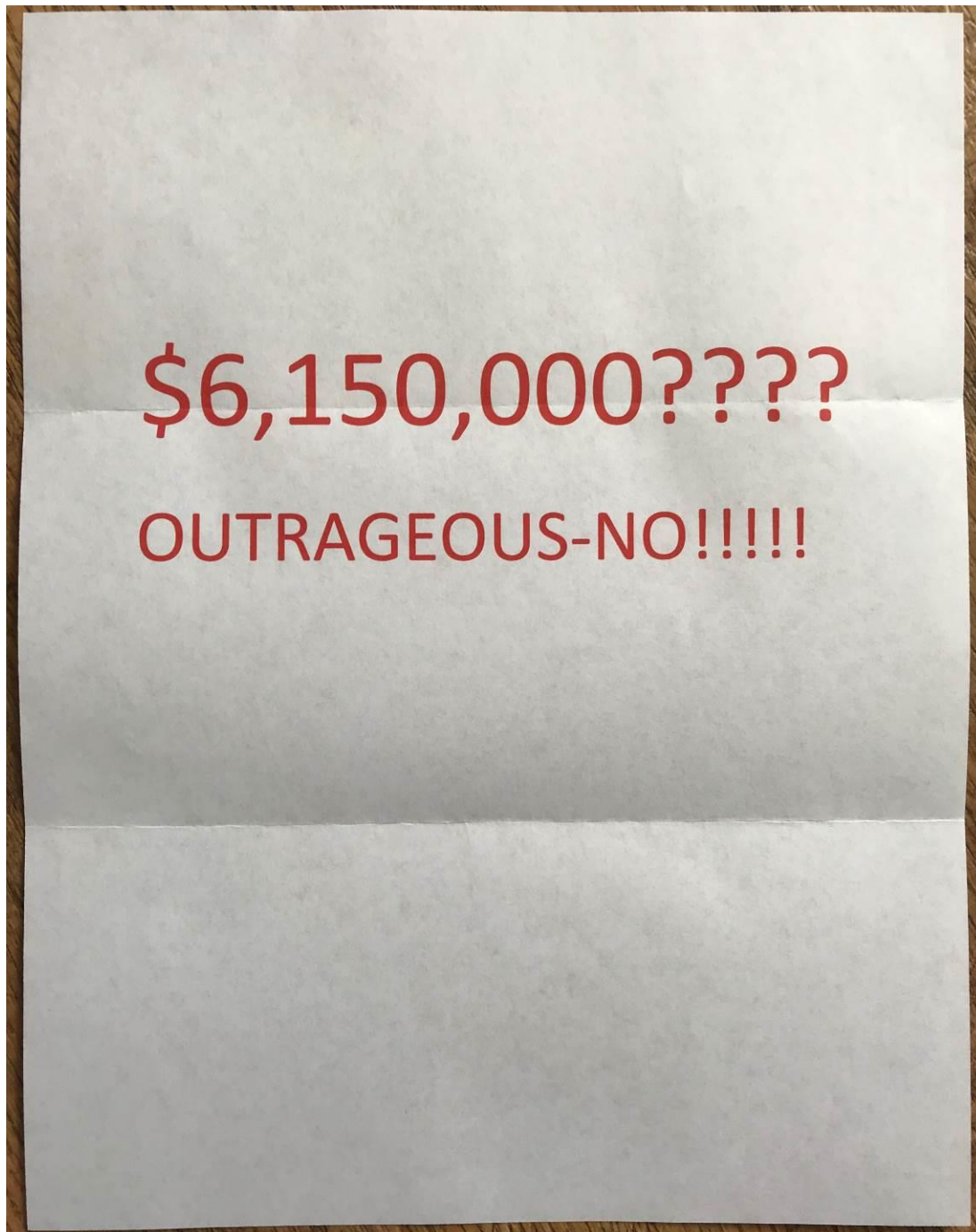
The parking areas and county road have created an area on the north end of the ranch that will get overhunted. Fish, Wildlife & Parks other objective is to manage wildlife. Once again, due to the location of the parking areas you have failed miserably at managing the wildlife on the north end of the ranch.

Springhill Ranch has leased the hunting rights on this ranch since they purchased it. These hunters that leased the hunting rights **drove the entire ranch** on existing two track roads. These hunters who leased the hunting rights payed no where near \$6,150,000.00 yet they had better access to hunt this ranch than hunters hunting in the future as a Fish, Wildlife & Parks Conservation Easement!!!!

There is a good two track road that loops around the heart of this ranch and for \$6,150,000.00 there should be several parking areas on this road!!

In conclusion, I don't feel the Fish, Wildlife & Parks proposed parking areas provide public access to hunters.

Comment 41 - Postmarked January 17, 2018 in Billings, MT





One of the specific purposes of these Easements is to provide the public reasonable access for recreational purposes. Public recreational access is defined in the Easements to be "recreational hunting, trapping, and wildlife viewing."

Section 8 of the Management Plan indicates that the "amount of public access provided for wildlife watching will be at the discretion of the landowner." At a minimum, the landowner and the FWP need to provide guidelines and requirements to ensure that this purpose is encouraged and provided for throughout the year, if conditions permit, with practical and meaningful (see discussion below) public access.

In addition, pursuant to Section 9 of the Management Plan, the landowner must allow and can select as few as one member of the public to trap on the land during established trapping seasons. No doubt, the same trapper the landowner has selected and allowed as past practice. If this is truly intended to be a legitimate purpose for public access then multiple trappers should be encouraged consistent with the Department's view that one private hunter leasing the property constitutes "minimal to nonexistent" public access.

Clearly, the public access provided for wildlife viewing and trapping as presented in the Management Plan is focused on limiting and minimizing public access and as such is a farce and anything but reasonable. Why even purport them as a purpose? It's a joke!

With regard to access for recreational hunting the FWP asserts that the "lack of places to hunt is a primary barrier to recruitment and retention of hunters." Certainly, this huge 20,379 acre (31.84 sections) complex could provide some opportunity in that regard! Unfortunately, the devil's in the details.

The Easements and Management Plan limit public access to walk-in only from designated parking areas, as well as, prohibit wheeled motorized and non-motorized vehicles and overnight camping.

Figure 8.1 in the Management Plan provides a map depicting the current three designated parking areas conveniently located on existing county roads. Unfortunately, these designated areas are located on the outer fringes of this huge complex with 25 sections of rough country in the heart of the ranch with no practical or meaningful access at all. Most people simply can't and won't hike that far in that kind of country in one day! Ultimately, as currently designed this public access will result in little more than a drive-thru experience through a very small portion of the ranch for the vast majority of the public.

In order to provide for practical and meaningful public access on a ranch this size the Easements and Management Plan need to be revised to provide a minimum of 12-15 parking areas interspersed throughout the complex using ranch roads.

Again, it is clear that neither the landowner and evidently the Department have any desire to provide public access. Undoubtedly, the single, private individual that leased the hunting rights on this property in the past enjoyed far "more access" than the "public" altogether will have under the current plan.

In summary, it is unconscionable and extremely disappointing that the Montana FWP could have agreed to this! Perhaps that is why purpose number 3 of the Easements exists: "If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished."

The purpose of providing reasonable public access is a colossal failure from the onset! This is nothing more than a pretense to provide public access. In reality, it's a sham and a shame to the tune of \$6,253,377!

A Montana Citizen for Fiscal Responsibility.

P.S. Unfortunately, the effectiveness of the first Easement purpose (preserve, protect, conserve etc.) can't be assessed without the significant passage of time. However, it is extremely difficult to get a warm, fuzzy feeling with regard to the landowner's motivation and intent to diligently fulfill the requirements of this purpose either, given their blatant intent to disregard the purpose to provide reasonable public recreational access.

## **Appendix B**

### **Letter from Springhill Ranch**

**Springhill Ranch – 618 Ranch Access S – Wibaux, Montana 59353**

January 21, 2018

Dear Melissa,

Thank you for sending us the decision notice, including all of the public comments. Several of the positive comments from hunters reinforced that this easement truly does provide benefit for the public as we had envisioned throughout this process. We have spent a lot of time thinking about the comments in opposition. While you have addressed the complaints extremely well, we think we have come up with some ideas to improve public access.

**In regard to public access by road, we would propose 2 additional parking spots in the easement and an additional 1 in the management plan.** Springhill Ranch would agree to adding the 2 permanent parking areas at the A-Frame and at the east entrance to ranch on Delp Drive, and adding a third one southwest of headquarters (just past the house) in the Management Plan. The A-Frame parking is on the north edge of the property, but would provide additional parking for those hunting the far north end of the ranch. The parking on the NE side of the ranch on Delp Drive would be about 2 miles from the next parking area, and provides easy access to two pastures with timbered draws. The parking SW of the house would provide parking closer to the heart of the ranch by about a mile (2 miles roundtrip) from the closest parking spot currently identified. It is also in close proximity to Glendive Creek, which is typically good hunting territory.

While we have every hope that the parking area SW of the house will work out well and we offer it with the intention of it being there forever, we would need the ability to eliminate this parking area if there are conflicts. Because it is close to the house there is greater chance of issues; however, it is also our best opportunity to provide better access to the interior of the ranch, so we would like to create this parking site.

We would prefer not to allow hunters to pull off just anywhere along the county road. Our main concerns with this option are safety (there are a lot of hay trucks and several cattle trucks and pickups and trailers hauling stock traversing these roads in the fall), and weed spread (rather than being mostly contained to parking areas, now the entire county road is at greater risk for deposit of weed seeds wherever someone pulls off).

**Also in regard to hunting access,** we are willing to let people stay overnight if they have a multi-day reservation (so they could stay the night between their hunting days) in the parking areas that are more than a mile from the two existing homes during hunting season if they are fully self-contained (meaning we won't find human waste on the ground anywhere in the area and they won't have a campfire). That means they could camp at 4 of the 6 parking areas. We understand that it is at least a 30 minute drive to the ranch from anywhere, and longer if the hunter is further away than Wibaux, and we think this concession could help address that. They



would still have to travel out here the first day, but then could stay until their hunt was done. Again, this would be a privilege granted in the Management Plan, NOT the easement. We would need to develop language that allows us to discontinue this camping privilege if it is abused. And it would be only for hunters, unless we provide permission personally otherwise.

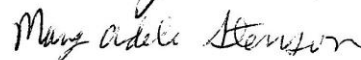
We would also be willing to allow hunters to pack in a camp on foot into the interior of the ranch for a multi-day hunt. They could not have a campfire, but a little propane cook stove would be fine. Those who are willing to walk would then be able to get to the interior and have more time to actually hunt once they are there because they wouldn't have to hike in and out each day. We hope this will help make hunting the middle of the ranch more attractive and feasible for people. We would like to reward those sportsmen who are willing to put in the work to get to the heart of the ranch.

We understand that for people who have never been on the ranch, much less traveled it in inclement weather, that it looks like the ranch 2-track road should become a public access road. Those people don't know that we often can't travel those roads ourselves after a storm, and we certainly don't keep them up to a standard that would be safe for the public. Additionally, we don't believe that 600 hunters driving throughout the ranch is in the best interest of a positive hunting experience or for running a ranch and moving cattle along those same travel corridors. The camping and added parking spots should provide a balance of more ability to drive on the north end and more of a back-to-nature experience on the south end.

We appreciate that the Department has worked with us in good faith throughout this process and we have done the same. It has been a balancing act trying to weigh the public good and wildlife habitat with the ability to run the ranch. We hope that the proposed measures above will help to truly provide a good experience for hunters of all kinds over the years.

We look forward to working out the details with you.

Sincerely,



Richard Kip Stenson, President

Mary Adele Stenson, Sec/Treas



## Appendix C

### Updated Parking Areas Map

